



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-8000

OFFICE OF MULTIFAMILY HOUSING ASSISTANCE RESTRUCTURING

DATE: April 10, 2003

MEMORANDUM FOR: All OMHAR Staff and PAEs

FROM: Claude Dickson, Bonds Manager

SUBJECT: PAE Responsibility for Properties Financed with Bond Financing

PURPOSE

The purpose of this memorandum is to clarify the requirements for document submissions for properties with bond financing, both Lite and Full submissions. There are no policy changes contained herein with regard to the handling of either Fulls or Lites; the information provided below incorporates information at the Resource Desk and expands on the guidance provided by Section 5.5.2 of the PRA. Document submission requirements have been modified to clarify that the original HAP contract must be submitted along with HFA Regulatory Agreement. Having the HAP contract allows the Bond Department to double check the information contained in REMS. The HFA Regulatory Agreement has been added to the document list because the Bond Department has encountered provisions in HFA Regulatory Agreements which affect the Owner's prepayment rights. Finally, note that Attachment A provides an outline of what OMHAR expects to be contained in an Executive Summary.

REQUIREMENTS FOR BOTH LITE AND FULL TRANSACTIONS

PAEs must always collect and submit *all* of the following documents for *both* Lite and Full transactions.

At all times, the PAE should include entire documents (not partial documents), which are signed by all parties and which identify the project as being covered by the document.

I. Financing Documents:

- A. Note. Submit a fully executed note (signed by all parties).
- B. Allonges/modifications to the note. Submit all note modifications and/or allonges to the note. Such documents are especially likely to exist when there has been a bond refunding and the owner participated in the refunding. If the PAE cannot locate any note modifications or allonges executed contemporaneous with the Refunding Bond Indenture, the PAE must confirm with the HFA that the Owner did not participate in the refunding.
- C. Riders. Submit any Riders (or Prepayment Riders), which may be attached to the back of a note. Such documents are especially likely to exist when there has been a bond refunding. If the PAE cannot locate riders or prepayment riders executed contemporaneous with the Refunding Bond Indenture, the PAE must confirm with the HFA that the Owner did not participate in the refunding.
- D. Regulatory Agreement. The Regulatory Agreement can contain language restricting the Owner's prepayment rights and consequently should be submitted at all times.

II. Bond Documents

- A. Trust Indenture. Properties funded by bonds typically have a Trust Indenture. In some jurisdictions, there are Bond Resolutions instead of a Trust Indenture. If there is a Trust Indenture, that document must always be provided. An Official Statement or Offering Statement is not a substitute for the Trust Indenture. If the project has been subject to a bond refunding, the PAE must provide the Trust Indenture for the bond refunding. If it is available, the original Indenture should be submitted as well.

The PAE should be careful to make sure the Trust Indenture is for the asset submitted to OMHAR. Typically, the property is identified in the Preamble to the Trust Indenture. Linking the indenture to the property is particularly important in large bond issues that finance more than one property. In large bond issues, there is frequently an exhibit or appendix, which identifies the properties to be funded by the bond issue. Sometimes there is an indenture for the general bond issue and supplemental indentures for the specific properties financed (which means that both the general indenture and the supplemental indentures must be submitted). Regardless of the format of the bond issue, the link between the property and the Trust Indenture must be established.

- B. Debenture Lock Agreement, if any. This document is most likely to exist if HUD participated in a bond refunding for the project.
- C. Refunding Agreement, if any. This document is most likely to exist if HUD participated in a bond refunding for the project and HUD and the HFA are sharing proceeds from the refunding (McKinney Act savings). McKinney Act savings refunding agreements are most likely to be present in refunding bonds issued in 1992 and later.
- D. Additional document for cases involving refunding.
1. Refunding Agreement (or FAF Refunding Agreement) and/or a Debenture Lock Agreement, if HUD participated in the refunding. The PAE must submit the Refunding Agreement and/or Debenture Lock Agreement or confirm that no such documents exist.

III. HAP Contract

The original HAP contract must be submitted along with any extensions to the contract.

SPECIFIC GUIDANCE FOR FULLS

Executive Summary

For all Full restructurings, OMHAR will make a formal determination of eligibility for each bond transaction. To assist this process, in all cases, the PAE must submit an Executive Summary that analyzes the documents gathered by the PAE. The requirements for the submission of the Executive Summary are detailed in Attachment A.

The Executive Summary must be signed by an authorized agent of the PAE, identify the property name, location and FHA case number on the cover page, and include the required documents listed above. The Executive Summary should be submitted to the Portfolio Director for the office in which the PAEs Relationship Manager is located as well as the OMHAR Bond Department.

The deadline for submission of the Executive Summary is 150 days from the date of acceptance of the project (PRA, Section 5.7.1(a)). However, the PAE is encouraged to make every effort to submit the Executive Summary substantially ahead of the deadline to allow adequate time for review without causing delay in the processing.

Defeasance Analysis

If the PAE believes that defeasance may be viable, the PAE may request permission to complete a Defeasance Analysis *after OMHAR review and concurrence by the Office of General Counsel (OGC)*. The defeasance analysis is not authorized until the review is complete and concurrence has been obtained.

SPECIFIC GUIDANCE FOR LITES

The PAE must collect the relevant documents listed above (and will be compensated the \$500 fee for doing so by executing a 2.15 waiver), and forward the documents to the OMHAR Bond Department for exemption/redemption determination. However, NO EXECUTIVE SUMMARY is required.

The rationale for reviewing Lite bond transactions is that a state/locally financed project whose financing documents conflict with M2M is not eligible for M2M; the transaction must be reviewed for eligibility to ensure that rents are not reduced on ineligible properties, which could potentially have an adverse effect on the bonds.

CONTACTS

Please direct questions to Claude Dickson (Claude_C._Dickson@HUD.GOV).

Attachment A: Outline of Executive Summary

ATTACHMENT A

Outline of Executive Summary

1. Front Page
 - a. Project Name
 - b. FHA Number
 - c. Location
2. Introduction
 - a. Provide a brief history of the transaction, date of note, amount of note. Identify bond

- issuance (including date and amount), and any refunding bond issuance (including date and amount)
 - b. Include the expiration date of the original HAP contract and indicate whether the contract has been extended and the expiration date of any extensions.
3. Analysis of Loan Documents
- a. Provide an analysis of all relevant loan documents (and only those that are relevant)
 - b. Identify and quote important provisions
4. Conclusion
- a. Provide a conclusion, stating whether the project is eligible for M2M.
 - b. If there is a lockout, provide the date on which the lockout ends and identify the document in which the lockout appears.
 - c. Note any consent required for prepayment or redemption and the parties from whom consent must be obtained
 - d. Note any prepayment penalties or bond premiums
 - e. Note any notice periods under the bond documents
 - f. Note any unusual provisions, such as a 366 holding period for bankruptcy or differences (conflicts) between the note prepayment provisions and the bond redemption provisions (Note the PAE is not expected to resolve inconsistencies in the documents, just note where they exist).
5. Signature
- The Executive Summary must be signed by an authorized signatory of the PAE.
6. Attachments
- a. The Executive Summary must list as an attachment the documents submitted to OMHAR with the Executive Summary
 - b. Do not list or attach irrelevant documents. For example, OMHAR does not need the mortgage. OMHAR does not need the bond resolution if it merely authorizes the issuance of bonds. Financial statements are not needed for bond review.